

Town of Morrisville
Professional Services Contract

CONTRACT FOR: PROJECT NAME

This Contract is made and entered into as of the [] day of MONTH 2021, by the Town of Morrisville ("Town") and [COMPANY NAME] ("Contractor"), (X) a corporation, () a professional corporation, () a professional association, () a limited partnership, () a sole proprietorship, or () a general partnership; organized and existing under the laws of the State of North Carolina.

- Sec. 1. Title and Purpose.** Contractor shall perform [DESCRIPTION OF WORK TO BE PERFORMED].
- Sec. 2. Scope and Services to be Performed.** The Contractor shall perform Work in accordance with Attachment A at the direction of the Town. Contractor will render its Services in accordance with the standard of care, skill and diligence exercised by members of the same profession providing similar services under similar conditions at the locale of the Project and at the time the Services are to be performed. In this contract, "Work" means the services that the Contractor is required to perform pursuant to this contract and all the Contractor's duties to the Town that arise out of this contract. Any modifications, corrections, or change orders by either party must be made in writing signed in the same manner as the original. The Town reserves the right to refuse payment for any work outside that authorized herein or pursuant to a duly approved amendment or change order.
- Sec. 3. Complete Work without Extra Cost.** Unless otherwise provided, the Contractor shall obtain and provide, without additional cost to the Town, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work. All work shall be completed by [DATE].
- Sec. 4. Compensation.** The Town agrees to pay the Contractor for the work completed and for services performed within the scope of this contract up to and "not to exceed" [SAMOUNT]. Payments for additional work completed or services performed under this contract must be approved in writing by the town prior to the commencement of such work or service. The Town shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this contract.
- Sec. 5. Contractor's Billings to the Town.** Contractors shall submit their invoice to the Town's project manager for the work or portion of the work completed or services performed as well as provide a Contractor Sales Tax Report when applicable or requested. The Town's project manager prior to submitting the invoice to the Finance Department will verify the charges for quantities of work completed or services performed.
- Sec. 6. Insurance.** Contractor shall maintain insurance policies at all times with minimum limits as follows:

<u>Coverage</u>	<u>Minimum Limits</u>
Workers' Compensation	Statutory Limits
Employers' Liability	\$500,000
General Liability	\$1,000,000 per occurrence (\$2,000,000 aggregate)
Automobile Liability	\$1,000,000
Professional Liability (E & O)	\$1,000,000 per occurrence (\$2,000,000 aggregate)

Upon acceptance of the contract by the Town the contractor shall provide the Town with a **Certificate of Insurance** for review prior to the issuance of any contract or Purchase Order. All Certificates of Insurance will require thirty (30) days written notice by the insurer or contractor's agent in the event of cancellation, reduction, or other modifications of coverage. In addition to the notice requirement above, the Contractor shall provide the Town with immediate written notice of cancellation, reduction, or other modification of coverage of insurance. Upon failure of the Contractor to provide such notice, the Contractor assumes sole responsibility for all losses incurred by the Town for which insurance would have provided coverage. The insurance certificate shall be for the initial contract period of one (1) year and shall be renewed by the contractor for each subsequent renewal period of the contract.

The Town shall be named as an **additional insured** and the statement should read "Town of Morrisville is to be added as an additional insured as evidenced by an endorsement attached to this certificate." Only "A" rated insurance companies will be acceptable to the Town. In the event the contractor fails to maintain and keep in force the insurance herein required, the Town reserves the right to cancel and terminate the contract without notice.

The Principal Officer of the Contractor's firm shall, upon request of the Town, provide a statement of proof indicating that a **Drug-Free Workplace Program** is in place and that where required by law, company drivers meet **the DOT/CDL licensing** requirements.

Sec. 7. Performance of Work by Town. If the Contractor fails to perform the Work in accordance with the schedule referred to in Sec. 2 above, the Town may, in its discretion, in order to bring the project closer to schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the Town's rights and remedies. Before doing so, the Town shall give the Contractor reasonable notice of its intention. The Contractor shall reimburse the Town for all costs incurred by the Town in exercising its right to perform or cause to be performed some or all the Work pursuant to this section.

Sec. 8. Termination.

- (a) The Town may terminate this contract in whole or, from time to time, in part, for the Town's convenience or because of failure of the Contractor to fulfill the Contract obligations. The Town shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall – (1) Immediately discontinue all services affected (unless the notice directs otherwise);
- (b) If the termination is for the convenience of the Town, the Town shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.
- (c) If, after termination for failure to fulfill contract obligations, it is determined that the Contractor had not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Town.
- (d) The rights and remedies of the Town provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

Sec. 9. Attachments. The following attachments are made a part of this contract and incorporated herein by reference:

Attachment A – [LIST NAME OF ATTACHMENT]
[ADDITIONAL ATTACHMENTS]

In case of conflict between an attachment and the text of this contract excluding the attachment, the text of this contract shall control. Any attachment, which materially alters the Standard Terms contained herein, must be reviewed pursuant to the Town's Contract Review Procedure.

Sec. 10. Notice.

- (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, electronic delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the Town:

[NAME], [POSITION TITLE]
Town of Morrisville
100 Town Hall Dr.
Morrisville, NC 27560
Phone Number: (919) 463-[XXXX]
Email: [XXXXX]@townofmorrisville.org

To the Contractor:

Attn: [PROJECT MANAGER]
[COMPANY NAME]
[STREET ADDRESS]
[CITY], [STATE] [ZIP]
Phone Number: (XXX) XXX-XXXX
Email: [XXXXXX@XXXXXX]

- (b) Change of Address, Date Notice Deemed Given: A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given at the time of actual delivery if it is personally delivered or sent by fax. If the notice or other communication is sent by US Mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the US Postal Service or upon actual delivery, whichever first occurs.

Sec. 11. Indemnification. To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless the Town of Morrisville, its agents, officers, and employees, from and against all charges that arise in any manner from, in connection with, or out of this contract to the extent proximately caused by the negligent acts, errors or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them. In

performing its duties under this section, the Contractor shall at its sole expense defend the Town of Morrisville, its agents, officers, and employees with legal counsel reasonably acceptable to the Town. As used in this subsection – “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, expenses, interest, reasonable attorney’s fees, and amounts for alleged violations of North Carolina law or federal law, including but not limited to, sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders. Nothing in this section shall affect any warranties in favor of the Town that are otherwise provided in or arise out of this contract. Nothing in this section shall require the Contractor to defend the Town of Morrisville if the Contractor is a “design professional” as defined in N.C.G.S. § 22B-1(f)(4), or if this Contract includes “design professional services” as defined in N.C.G.S. § 22B-1(f)(6). This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

Sec. 12 Miscellaneous.

- (a) **Choice of Law and Forum.** This contract shall be deemed made in Wake County, North Carolina. This contract shall be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the appropriate division of the North Carolina General Court of Justice, in Wake County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.
- (b) **Waiver.** No action or failure to act by the Town shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.
- (c) **Performance of Government Functions:** Nothing contained in this contract shall be deemed or construed to in any way stop, limit, or impair the Town from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.
- (d) **Severability.** If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.
- (e) **Assignment, Successors and Assigns.** Without the Town’s written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. Unless the Town otherwise agrees in writing, the Contractor and all assigns shall be subject to all the Town’s defenses and shall be liable for all the Contractor’s duties that arise out of this contract and all of the Town’s claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.
- (f) **Compliance with Law.** In performing all the Work or Services contained herein, the Contractor and Contractors Employees shall comply with all applicable laws and regulations of the State of North Carolina pertaining to such Work or Services including Occupational Safety & Health laws.
- (g) **Town Policy.** THE TOWN OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER TOWN CONTRACTS.
- (h) **EEO Provisions.** During the performance of this Contract the Contractor agrees as follows:
 - 1. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall post in conspicuous places available to employees and applicants for employment, notices setting forth these EEO provisions.
 - 2. The Contractor in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
- (i) **No Third Party Right Created.** This contract is intended for the benefit of the Town and the Contractor and not any other person.
- (j) **Principles of Interpretation.** In this contract, unless the context requires otherwise the singular includes the plural and the plural the singular. The pronouns “it” and “its” include the masculine and feminine. Reference to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The word “person” includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and any other legal entities.

- (k) **Modifications, Construction Change Directives (CCD), Entire Agreement.** A modification, or construction change directive per the AIA standards, of this Contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. This Contract contains the entire agreement between the parties pertaining to the subject matter of this Contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed, or implied, between the parties, other than as set forth or referenced in this Contract. Construction change directives to unit priced contracts will be paid at the unit price and non-unit priced contracts will be paid at the contractor's cost as defined by the AIA plus the reasonable allowance for overhead and profit which shall be agreed to between the contractor and Town.

Sec. 13 E-Verify. Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if Contractor utilizes a subcontractor, Contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

Sec. 14 Attorney's Fees. Should either party deem it necessary to retain an attorney or other counsel to defend and/or pursue the enforcement of this Contract, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

Sec. 15 Electronic Signature. This Contract may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-358.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Contract by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

IN WITNESS WHEREOF, the Town of Morrisville and the Contractor have caused this Contract to be executed under seal by their respective duly authorized agents or officers.

TOWN OF MORRISVILLE:

CONTRACTOR:

By: _____
Authorized Town Official

By: _____
Authorized Company Official

ATTEST BY:

ATTEST BY:

Town Clerk

Authorized Company Official

SEAL:

This Instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Town Finance Officer

Date